IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 3434 of 2007(H)

OS.56/2006 of MUNSIFF COURT,MUVATTUPUZHA
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PETITIONER:

ST.MARY'S ORTHODOX SYRIAN CHURCH
MARADY, REPRESENTED BY ITS VICAR.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.SAJI VARGHESE KAKKATTUMATTATHIL

RESPONDENTS:
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1. V.I. BABY, S/O.V.ITTAN, VATTAKKATTIL HOUSE
SOUTH MARADY KARA, MARADY VILLAGE
MUVATTUPUZHA TALUK.

2. C.V.SAJU, S/O.VARKEY, CHERUSSERIL HOUSE
EAST MARADY KARA, MARADY VILLAGE, MUVATTUPUZHA TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31 /1 /2007 THE COURT ON 31/01/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.3434 OF 2007

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Dated this the 31st day of January 2007

JUDGMENT

As per order dated 6.3.06, District Court, Ernakulam allowed T.O.P. 34/06 and directed transfer of O.S.56/06 on the file of Munsiff Court, Muvattupuzha to Ist Additional District Court, Ernakulam at the instance of defendants in that suit recording that plaintiffs have no objection for the transfer. Defendants in that suit, who moved T.O.P.34/06 filed this petition under Article 227 of Constitution of India contending that after Ext.P4 order, Ext.P5 order was passed in I.A.430/06 after setting them ex parte and that order was passed without their knowledge and they came to know about the order only on 27.1.07, when the Sub Inspector of Police informed them about the order. Petitioner to quash Ext.P5 order.

2. Learned counsel appearing for petitioner was heard.

3. Eventhough Ext.P4 order was passed on 6.3.06, there is no material to show that the order of transfer was communicated to the learned Munsiff. Evidently when Ext.P5 order was passed, learned Munsiff was unaware of the order of transfer, as otherwise such an order would not have been passed. The argument of learned counsel appearing for petitioner is that after reporting no objection for the transfer before District Court and aware of the order of transfer on 6.3.06, respondents the plaintiffs in that suit suppressed that fact and obtained Ext.P5 order behind their back and therefore the order is to be quashed. Ext.P4 order was passed in Ext.P2 application filed by respondents, to which Ext.P3 objection was filed by petitioners. In Ext.P3 objection, petitioners contended that they have moved District Court for transfer of the suit in O.P.34/06. Petitioners therefore cannot be heard to contend that they were unaware of Ext.P2 application. Eventhough Ext.P5 order was passed, they should have verified whether

the suit was transferred by the Munsiff Court as directed in Ext.P4 as well as the fate of Ext.P2 application. Therefore for the sole reason that Ext.P5 order was passed after Ext.P4 order, petitioners are not entitled to contend that the order is to be quashed. If the case of petitioners is that they could not appear before the learned Munsiff, when Ext.P5 order was passed in view of the order of transfer under Ext.P4, it is for them to satisfy Ist Additional District Court, Ernakulam where the suit now stands transferred to vacate the order passed or to file an appeal against the order. Petitioners may file an application to get the order vacated before Ist Additional District Court, Ernakulam. If such an application is filed, learned District Judge to pass appropriate order as expeditiously as possible, at any rate, within ten days from the date of filing of the application.

In view of the submission made by learned counsel that prior to 20.11.06 no interim order was

passed in I.A.430/06 and Ext.P5 order was passed only for the reason that petitioners were set ex parte and no objection filed eventhough Ext.P3 objection was filed and considering the fact that Ext.P5 order was passed without bringing it to the notice of the learned Munsiff the fact that the suit was already stood transferred, to enable petitioners to get appropriate order from Ist Additional District Court, operation of Ext.P5 order is suspended for seven days from today.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006